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WEST VIRGINIA LEGISLATURE
STATE HOUSE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 3155

(By Delegates Amores, Craig, Varner, Armstead, Brown and Kominar)



Passed March 8, 2003

In Effect Ninety Days from Passage

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OFFICE OF THE CLERK
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

H. B. 3155

(BY DELEGATES AMORES, CRAIG, VARNER, ARMSTEAD,
BROWN AND KOMINAR)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section ten, article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to confidentiality of trade secrets; modifying review and notification procedures associated with release of information required for air quality permits; and allowing air quality board to hear appeal of agency decisions.

Be it enacted by the Legislature of West Virginia:

That section ten, article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

§22-5-10. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.

1 (a) All air quality data, emission data, permits, compliance
2 schedules, orders of the director, board orders and any other
3 information required by a federal implementation program (all
4 for convenience hereinafter referred to in this section as
5 “records, reports, data or information”) obtained under this
6 article shall be available to the public, except that upon a
7 showing satisfactory to the director, by any person, that records,
8 reports, data or information or any particular part thereof, to
9 which the director has access under this article if made public,
10 would divulge methods or processes entitled to protection as
11 trade secrets of the person, the director shall consider these
12 records, reports, data or information or a particular portion
13 thereof confidential: *Provided*, That this confidentiality does
14 not apply to the types and amounts of air pollutants discharged
15 and that these records, reports, data or information may be
16 disclosed to other officers, employees or authorized representa-
17 tives of the state or of the federal environmental protection
18 agency concerned with enforcing this article, the federal Clean
19 Air Act, as amended, or the federal Resource Conservation and
20 Recovery Act, as amended, when relevant to any official
21 proceedings thereunder: *Provided, however*, That the officers,
22 employees or authorized representatives of the state or federal
23 environmental protection agency protect these records, reports,
24 data or information to the same degree required of the director
25 by this section. The director shall promulgate legislative rules
26 regarding the protection of records, reports, data or information,
27 or trade secrets, as required by this section.

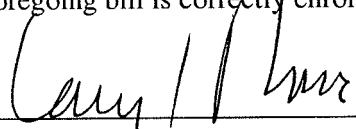
28 (b) Upon receipt of a request for records, reports, data or
29 information which constitute trade secrets and prior to making
30 a final determination to grant or deny the request, the director
31 shall notify the person claiming that any record, report, data or
32 information is entitled to protection as a trade secret, and allow
33 the person an opportunity to respond to the request in writing.

34 (c) All requests to inspect or copy documents must state
35 with reasonable specificity the documents or type of documents
36 sought to be inspected or copied. Within five business days of
37 the receipt of a request, the director or his or her designate shall
38 by order: (1) Advise the person making the request of the time
39 and place at which the person may inspect and copy the
40 documents, which, if the request addresses information claimed
41 as confidential, may not be sooner than thirty days following
42 the date of the determination to disclose, unless an earlier
43 disclosure date is agreed to by the person claiming the confi-
44 dentiality; or (2) deny the request, stating in writing the reasons
45 for denial. If the request addresses information claimed as
46 confidential, notice of the action taken pursuant to this subsec-
47 tion shall also be provided to the person asserting the claim of
48 confidentiality.

49 Any person adversely affected by a determination, by order
50 or otherwise, regarding information confidentiality under this
51 article may appeal the determination to the air quality board
52 pursuant to the provisions of article one, chapter twenty-two-b
53 of this code. The filing of a timely notice of appeal shall stay
54 any determination, by order or otherwise, to disclose confiden-
55 tial information pending a final decision on the appeal. The
56 scope of review is limited to the question of whether the
57 records, reports, data or other information, or any particular part
58 thereof sought to be inspected or copied, are entitled to be
59 treated as confidential under subsection (a) of this section. The
60 air quality board shall afford evidentiary protection in appeals
61 as is necessary to protect the confidentiality of the information
62 at issue, including the use of in camera proceedings and the
63 sealing of records where appropriate.

64 (d) In lieu of the provision of chapter twenty-nine-b of this
65 code, the provision of this section shall apply to determinations
66 of confidentiality.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



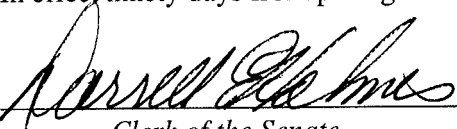
Chairman Senate Committee



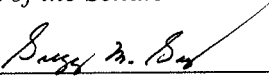
Chairman House Committee

Originating in the House.

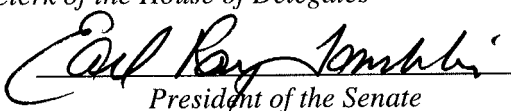
In effect ninety days from passage




Clerk of the Senate



Clerk of the House of Delegates

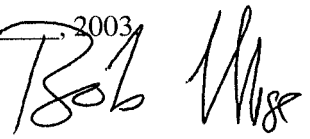


President of the Senate



Speaker of the House of Delegates

The within is approved this the 1st
day of April 2003



Governor

PRESENTED TO THE
GOVERNOR

Date 3/24/03

Time 10:45 am